

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CA2287
)	EEOC NO.: 21BA81237
MEHRSHID P. TOOSI,)	HUD NO.: N/A
)	ALS NO.: 09-0277
Complainant.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2008CA2287, Mehrshid P. Toosi, Complainant, and National City Corporation, Respondent; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation Report and the Complainant's Request, and the Department's response to the Complainant's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Department's dismissal of the Complainant's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On April 24, 2008, the Complainant filed a charge of discrimination with the Department, in which she alleged that from January 2, 2008 through February 7, 2008, the Respondent harassed her because of her age (Count A) and mental disability, depression (Count B); and that on February 4, 2008, the Respondent issued her a written warning because of her age (Count C) and mental disability, depression (Count D), in violation of § 2-102(A) of the Illinois Human Rights Act ("Act"). On May 4, 2009, the Department dismissed the Complainant's charge for

lack of substantial evidence. On May 28, 2009, the Complainant filed a timely Request.

2. The undisputed evidence in the investigation file shows that the Complainant is employed by the Respondent as an Office Manager in one of its branch offices. In January of 2008, the Respondent transferred one of its employees to the Complainant's branch, where he assumed the position of Branch Manager.
3. On February 7, 2008, the Complainant took a short-term disability leave from her position. On February 20, 2008, while still on disability leave, the Complainant filed a written complaint with the Respondent's Human Resources Department, alleging that she had been harassed by the Branch Manager.
4. The Complainant contended that the Branch Manager had made improper statements to her on January 14, 2008, including an inappropriate age-related comment. On January 23, 2008, the Branch Manager posted the Complainant's position as a vacant and available full-time position. On January 28, 2008, the Branch Manager made a comment about the Complainant having gray hair.
5. On February 4, 2008, the Branch Manager issued the Complainant a One Time Written Warning for violating confidentiality.
6. The Respondent conducted an investigation into the Complainant's allegations that the Branch Manager was harassing her. As a result of the investigation, the Respondent concluded that the Branch Manager had made an inappropriate age-related comment. The Respondent disciplined the Branch Manager by giving him a verbal warning, a counseling memo, and by placing him on a Performance Improvement Plan.
7. In the course of its investigation, the Respondent also determined that the Complainant had violated confidentiality. However, the Respondent recommended that the Final Written Warning be reduced to a Directive Counseling.
8. In her Request, the Complainant argues that the Department investigator made improper judgments as to who was telling the truth and reiterates that the Branch Manager engaged in harassing and discriminatory conduct against her. No additional evidence was submitted in support of the Request.

9. In its Response, the Department argues that its dismissal of the charge should be sustained for Lack of Substantial Evidence because, as to Counts A and B, the Complainant did not establish a *prima facie* case of harassment. As to Counts C and D, the Department argues that there was no evidence that the Complainant was issued the Final Written Warning because of her age and mental disability, that there was evidence of younger, non-disabled employees who had been disciplined equally, and that there was no evidence of pretext.
10. The Commission's review of the Department's investigation file leads it to conclude that the Department properly dismissed the Complainants' charge for lack of substantial evidence.
11. As to Counts A and B of the charge, as the Department correctly noted, in order to find substantial evidence of actionable harassment, there must be some evidence that the Respondent was motivated by discriminatory intent, and that the Complainant was subjected to a pattern of incidents that were so pervasive that they constituted a different term and condition of employment. See Henry and The Chicago Corporation, ___ Ill. HRC Rep. ___, Charge No. 1996CF2615, ALS No. 9653, February 2, 2001.
12. There is no evidence in the file of any actions motivated by the Complainant's disability.
13. The evidence in the file does show that the Branch Manager made inappropriate age-related comments to the Complainant on two occasions. There is no evidence that the posting of the open job position was motivated by the Complainant's age. However, assuming that this third incident was motivated by the Complainant's age, the Respondent investigated the alleged discriminatory conduct by its Branch Manager, made a determination that inappropriate conduct had occurred and took disciplinary action against the offending Branch Manager. There is no evidence that the Branch Manager continued to engage in the offensive conduct following his discipline. Therefore, three isolated incidents over a time period of less than one month does not establish a pattern of incidents pervasive enough to constitute a different term and condition of employment. The evidence further shows that the Respondent immediately took reasonable corrective measures to put an end to the harassing conduct.
14. As to Counts C and D of the charge, there is no substantial evidence in the record that the Complainant was issued the Final Written Warning on February 4,

2008, because of her age or her disability. The evidence shows that the Complainant had in fact engaged in inappropriate behavior when she breached confidentiality regarding her co-workers' alleged job security. There is no evidence in the file to suggest that the legitimate, non-discriminatory reason proffered by the Respondent for issuing the Complainant the Final Written Warning was a pretext for unlawful discrimination.

15. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of the charge was not in accordance with the Act. The Complainant's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Complainant's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the National City Corporation, as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

)

)

HUMAN RIGHTS COMMISSION

)

Entered this 16th day of September 2009.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini